

NEW YORK TIMES  
31 December 1984

# CBS-Westmoreland Trial: A Reprise

By M. A. FARBER

The way Ira Klein tells the story, it was when he encountered Samuel A. Adams in an editing room at CBS studios soon after the broadcast of the network's now disputed 1982 documentary on the Vietnam War that Mr. Adams said: "We have to come clean, we have to make a statement that the premise of the show is inaccurate."

Mr. Adams, a former Central Intelligence Agency analyst, was a paid consultant for the CBS Reports program, which charged that Gen. William C. Westmoreland's command in Saigon had conspired for "political" reasons to deceive President Johnson, the Joint Chiefs of Staff, Congress and the American public about the size of North Vietnamese and Vietcong forces in 1967.

Mr. Adams, who will testify as the lead witness for CBS, denies making the statements attributed to him by Mr. Klein, the film editor for much of the 90-minute broadcast.

## 'L.B.J. Had to Know'

But as Mr. Klein recalled the exchange on that day in February 1982, shortly after General Westmoreland had assailed the program, Mr. Adams went on to say, "L.B.J. had to know."

"Sam," Mr. Klein said he replied, "isn't it a little late? Why weren't you telling George about this all along?"

Mr. Adams, according to Mr. Klein, said he had repeatedly informed George Crile, producer of "The Uncounted Enemy: A Vietnam Deception."

On Thursday General Westmoreland's libel trial against CBS over the documentary will resume in Federal District Court in Manhattan, with the general's lawyers winding up their three-month effort to show not only that the broadcast was false but also that CBS and three other defendants, including Mr. Adams and Mr. Crile, knew that or acted with reckless disregard as to whether the program was true. To prevail, the plaintiff must prove malice as well as falsity.

Mr. Klein is expected to be examined about his exchange with Mr. Adams and much else that he recounted during a recent deposition when he testifies as the general's 19th and final witness. Mr. Adams — who, as a C.I.A. Vietnamese specialist in 1967, unsuccessfully opposed the military's position on enemy strength and called it a "monument of deceit" — is scheduled to follow him early next month as the first of a dozen witnesses for the network.

## Questions of Intent

So far, the trial has produced 6,013 pages of densely detailed testimony about the calculation of enemy strength and the making of a documentary: why some statistics were used by the military in 1967 and others were not, why some interviews by CBS were used in 1982 and others were not.

Behind the accounts of casualties from claymore mines and punji sticks, behind the reams of newly declassified military reports and cables that were as much concerned with how the press was interpreting the war as with how it was going in the field, behind the rolls of unused CBS film that flicker from a half-dozen television sets in the courtroom — behind all of what has emerged at this trial are questions of intent and credibility.

In nine days on the stand, General Westmoreland offered an impassioned rationale for his actions as commander of American forces in Vietnam between January 1964 and June 1968. And Mr. Crile, called as a "hostile witness" by the plaintiff, defended with equal fervor his editorial decisions regarding the documentary for which he was chiefly responsible. But which side, if either, is winning the hearts and minds of the jury is no clearer now than it was in early October, when the trial began.

Although they differ on most other points, lawyers for CBS and General Westmoreland agree that if Mr. Klein proves to be a persuasive witness, he could "damage" the network's case.

While Mr. Adams denies having said "we have to come clean," or anything like it, in his conversation with Mr. Klein, the former C.I.A. employee had touched on the same subject in a letter to Col. Gains Hawkins on Jan. 20, 1982, three days before the broadcast.

Overall, Mr. Adams wrote to Colonel Hawkins, a retired intelligence officer who had given a key interview for the documentary, the forthcoming program was "reasonably good."

"But as I mentioned before," he wrote, "there's a major problem: the documentary seems to pin the rap on General Westmoreland, when it probably belongs higher than that."

Dan M. Burt, General Westmoreland's principal attorney, plans to use both this letter and the editing room exchange to argue that CBS harbored doubts about the general's role in the handling of enemy strength estimates.

But Mr. Adams is expected to testify that while he suspected the White House of having originated the "deception" and he "talked endlessly" about that to Mr. Crile, he always believed the general's command had participated in "massive falsification" of data. "And Westy," he said in an interview last week, "certainly knew about aspects of it."

Mr. Klein, a 34-year-old freelance film editor who was brought into the Vietnam project by Mr. Crile, will be the only person who worked on the documentary to voluntarily testify for General Westmoreland. David Boles, the chief lawyer for CBS, is expected to portray him as a man who developed a vendetta against Mr. Crile and who was ignorant of much of the off-camera material gathered for the program.

In his \$120 million suit, General Westmoreland accuses CBS of saying he had imposed an "arbitrary ceiling" of 300,000 on reports of enemy strength in South Vietnam, suppressed reports from his officers of a higher enemy presence and a higher infiltration rate than was made known, and engineered a cover-up of the truth after the Tet offensive of January 1968.

The CBS documentary, which cost about \$250,000 to produce and has cost at least 10 times that to defend in court, sought to "offer an explanation for one of the great mysteries of the war — why for so long our Government apparently believed, and wanted us all to believe, that we were winning the war."

The broadcast said that the "conspiracy" by General Westmoreland's command to minimize enemy strength had left the President, American troops and the public "totally unprepared" for the scope of the Tet offensive.

"The President," said Mike Wallace, the narrator of the program and a defendant at this trial, "had been alerted to the enemy's intentions, but no one had been able or willing to inform him of the enemy's capability."

## Eight Supported Thesis

Of the nine people other than Mr. Adams and General Westmoreland who appeared on the program — some of whom will now testify for CBS — eight basically supported its thesis.

Some of the eight, including Colonel Hawkins and other intelligence officers, said that, while they had no direct orders from General Westmoreland, they had reduced figures or had witnessed others doing it because they believed, from briefings with the general or contacts with his aides, that he would not accept higher numbers.

From the testimony and other evidence to date, it appears that the size of the enemy in South Vietnam — except perhaps for the regular, uniformed troops known as "main and local forces" — was uncertain long before 1967, if not thereafter as well.

The official American military listing of enemy strength, normally published each month by General Westmoreland's command, was known as the order of battle.

But for months, even years, its figures for such categories as political cadre and "irregulars" — which included both full-time guerrillas and part-time, hamlet-based self-defense forces — remained static. These statistics seem to have been obtained in the early 1960's from South Vietnamese officials, who, in turn, had inherited them from the French in 1954. And, however widely these figures were circulated and publicized by President Johnson and others after his Administration made a major military commitment in Vietnam in 1965, they appear to have been given little credence by American intelligence analysts.

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In late 1966, Mr. Adams and some of his C.I.A. colleagues concluded — largely on the basis of newly captured enemy documents and other material provided by General Westmoreland's command — that the size of the irregular forces had been seriously underestimated and was now more than twice the 112,000 carried in the order of battle. The C.I.A. officials also said in internal memorandums that the total enemy strength figure of 280,000 was "far too low and should be raised, perhaps doubled."

Meanwhile, the Pentagon, confused by "apparent discrepancies" in the estimates but under pressure to satisfy what Gen. Earle G. Wheeler, chairman of the Joint Chiefs of Staff, called "an insatiable thirst for hard numbers here in Washington," ordered a review of methodology that would allow the military, the C.I.A. and other agencies to "play off the same sheet of music."

The result was a conference in Honolulu in February 1967, attended by Maj. Gen. Joseph A. McChristian, who had been General Westmoreland's chief of intelligence since 1965, and by Colonel Hawkins, who was head of General McChristian's order of battle section. While the conferees noted the difficulty of measuring the irregulars with precision, they agreed to continue including that category in the order of battle.

That spring, Colonel Hawkins's unit completed a 70-page analysis of the irregulars, one-third of whom had previously been considered to be guerrillas and two-thirds, self-defense forces. The new study found 61,000 guerrillas and 124,000 self-defense militia. Although the total of 185,000 was less than the 250,000 estimated by Mr. Adams, it was substantially higher than the 112,000 in the order of battle.

A similar analysis of the political cadre by Colonel Hawkins's staff concluded that the figure of 39,000 long carried in the order of battle should be increased to at least 80,000.

In the middle of May, two weeks before his scheduled transfer to Fort Hood, Tex., General McChristian presented General Westmoreland with a one-page cable for Washington containing Colonel Hawkins's higher figure for irregulars and political cadre. What happened then, and in the weeks and months thereafter when General Westmoreland ordered the self-defense forces removed from the order of battle altogether and the political cadre diverted to a separate listing, has been much in dispute at the trial.

On "The Uncounted Enemy," General McChristian said that General Westmoreland was "disturbed" when he first saw the increased figures for the irregulars. "And by the time I left his office," the former intelligence chief recalled, "I had the definite impression that he felt that if he sent those figures back to Washington at that time, it would create a political bombshell."

When General Westmoreland said on the program that he rejected General McChristian's estimates for the self-defense forces because he felt they were "specious" and because "the people in Washington were not sophisti-

cated enough to understand and evaluate this thing, and neither was the media," Mr. Wallace said:

"We underscore what General Westmoreland just said about his decision. He chose not to inform the Congress, the President, not even the Joint Chiefs of Staff, of the evidence collected by his intelligence chief, evidence which indicated a far larger army."

General Westmoreland also said, during the broadcast, that "political considerations" played no role in his deletion of the self-defense forces.

In court, the general stressed that, until he was shown the higher estimates, he had little interest in what he considered outdated data on civilian units of "old men, women and boys" who were of "no military consequence." He then concluded it was time to "separate the fighters from the non-fighters," partly because the press would interpret an increased number for the self-defense forces as a sign that his command faced a much larger armed enemy than he believed it did.

"Sure we were sensitive to press reaction," the general said. "We would have been dummocks if we weren't."

Nonetheless, the general said that, during and after a full briefing on the numbers in late May 1967, he informed his superiors of the new estimates and ordered that they be reviewed by a committee of field operations officers and embassy representatives.

Mr. Burt has introduced several documents from that period, including one written by General McChristian, that appear to support the general's statements and to demonstrate that the Joint Chiefs of Staff concurred in the removal of the self-defense forces.

After a protracted debate in mid-1967 between General Westmoreland's command and the C.I.A. — which had warned Robert S. McNamara, the Secretary of Defense, in May that the total "insurgent apparatus" in South Vietnam may be "in the half-million range" — an agreement was reached in September on a special intelligence estimate for President Johnson.

The special estimate placed the enemy's "military force" at 223,000 to 248,000, plus political cadre of 75,000 to 85,000. The C.I.A., some of whose officials had their own reservations about the capabilities of the self-defense forces, dropped its opposition to their exclusion from the order of battle, accepting a "verbal description" of them instead. The estimate noted that, while these forces may have numbered 150,000 in 1966 and were "still large and constitute a part of the overall Communist effort, they are not offensive military forces." No current figure for them was provided.

To Mr. Burt, this was all part of an "open" process in which General Westmoreland exercised his prerogative to take a "command position." It was "simply not the stuff of a conspiracy to

suppress," he told the jury.

To Mr. Boies — who has underscored a series of cables in which General Westmoreland and his staff, supported by ranking American diplomats, were adamant about the need to preserve their "image of success" and to avoid issuing an enemy strength figure higher than that already "carried by the press" — the "noise" over the figures in 1967 is not the issue today. The issue, he said, "is whether it was an honest debate or not."

To Mr. Crile, who has testified for seven days, the answer is plain.

"The only question that was raised by the documentary," he said in court, "was whether it was known by the President, by the Congress, by all the consumers of this intelligence that it was a dishonest debate" and that the military "had evidence that supported the C.I.A.'s position."

"That," Mr. Crile said, "was at the heart of it. Did anyone know that there had been arbitrary reductions that went into the military's position in several categories, did people know that intelligence decisions were being made for purely political reasons, for reasons of press concerns? These were the issues."

To Judge Pierre N. Leval, the case does not pivot on whether General Westmoreland's superiors were deceived but whether the general "sought to deceive" them.

The judge ruled before the trial that "although a reporter may have sufficient evidence of his charge to foreclose any material issue of constitutional malice, he may nonetheless make himself liable if he knowingly or recklessly misstates that evidence to make it seem more convincing or condemnatory than it is."